

COMMONWEALTH EDISON COMPANY	:	
	:	
	:	Docket No. 07-0566
	:	
Proposed General Increase in Rates	:	

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**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

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**REPLY BRIEF  
OF  
THE BUILDING OWNERS AND MANAGERS ASSOCIATION OF CHICAGO**

The Building Owners and Managers Association of Chicago (“BOMA”), by one of its attorneys, pursuant to Section 10-101 of the Public Utilities Act (the “Act”) and Section 200.800 of the Rules of Practice of the Illinois Commerce Commission (“ICC” or the “Commission”), hereby submits its Reply Brief in response to the Initial Briefs filed by Commonwealth Edison Company (“ComEd”), Constellation NewEnergy (“CNE”) and the Illinois Industrial Energy Consumers (“IIEC”) in the above-referenced proceeding.

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## **VII. NEW RIDERS**

### **C. RIDER SMP**

There appear to be two main issues with regard to Rider SMP: One, whether a rider mechanism to recover the costs from ratepayers for modernizing the electric system should be approved; two, what projects and specifications should be employed to effectuate building a Smart Grid for the benefit of ratepayers.

In its testimony and Initial Brief, BOMA provided qualified support to approving Rider SMP as a cost-recovery mechanism -- such qualified support hinging on the ability of Customers to access timely detailed information. Neither the information provided currently nor the information proposed by ComEd to be provided to customers is sufficient. (BOMA Ex. 3.0 – 3.4; 5.0 – 5.3; BOMA In.Br. at 3-6). Assuming approval of Rider SMP as a cost recovery mechanism, the discussion becomes extraordinarily important as to the specifications of the projects ComEd will be allowed to recover. Given that ratepayers/customers will be paying for all costs of development and implementation, it is axiomatic that such projects be accomplished in a way that guarantees consumers are the primary beneficiaries. (*See* CUB Ex. 3.0, 2:40-41).

Clearly, a Smart Grid necessitates decentralizing information in a way that is competitively neutral. Decisions regarding specifications and scope of hardware, software, vendors and the like must include customer and competitive entity input and not be simply dictated by a monopoly distribution utility. (*See* CNE Initial Brief at 2-3). As ComEd itself stated:

...Smart Grid technologies are the future of the industry and are necessary to support the continued economic growth and prominence of an international city like Chicago, and its surrounding region. Those technologies offer significant benefits to customers, utilities, the competitive market, and the environment... (See ComEd Exs. 15.0, pp.7-13, 16.0 2<sup>nd</sup> Corr., pp. -12, 21.0 Corr., pp.81-106, 23.0 Corr., pp.2-34, and 31.0, pp.4-23. ComEd Initial Brief at 66).

Accordingly, in order to maximize consumer benefits, BOMA seeks the Commission to establish a stakeholder process that specifically addresses and accomplishes customer goals and objectives in this new information era. (See BOMA Ex. 5.0: 21, 424-428).

## **VIII. COST OF SERVICE AND ALLOCATION ISSUES**

### **A. Overview**

In recent proceedings, BOMA has advocated that the Commission recognize the utility of marginal cost principles, if not in setting the revenue requirement, then at least in setting tariff elements, such as ComEd's energy efficiency or Rider SMP surcharges. (BOMA Ex. 5.0: 4-7, 24-95). The return to utility-sponsored energy efficiency plans and the application of technology in Smart Grid initiatives can only reach their respective full potential if customers receive price signals based upon marginal cost. (*Id.*) The current practice of establishing tariffs based only upon average costs may distort price signals and result in system inefficiencies. (*Id.*) In this high-priced energy environment and to provide more information to the parties and the Commission, ComEd should be required to file both marginal and average cost studies in any request for increases in rates. (*Id.*)

### **D. Rate Impact Analysis**

ComEd presented an incomplete rate impact analysis as part of their testimony that simply compared current rates to proposed rates. (See Alongi/Jones Dir., ComEd.

Ex. 12.0, 10:159-11:168; ComEd Ex. 12.2; ComEd. Ex. 32.0 (Cor.) 11:152-12:165). BOMA provided un-rebutted and definitive analyses that tracked the ComEd rate increases, on a bundled and unbundled basis, since 1997. (BOMA Exs. 1.0, 2.0, 2.2). Tracking historical rate increases is critical to allow for continuity in moderating rate increases; failure to take into account the longer term trend in electric rate increases can lead to distorted rates and continued inappropriate increases for certain classes.

## **E. Interclass Allocation Issues**

### **1. Across-the-Board Increase**

BOMA submits that the allocation of the revenue requirement should be based on costs, and that while BOMA urges the Commission recognize marginal cost principles, setting rates based on average cost principles at least provides some justification for setting rates. Providing once again for an across the board rate increase begs the question: Why utilize *any* study to allocate revenue requirement? If the Commission employs any rate mitigation relief for customers, equity requires the Commission look at such mitigation from a historical context as shown in (un-rebutted) BOMA Ex. 2.2, before making its decision to deviate from cost-based rates.

Instead of the use of any arbitrary or modified across the board increase to set rates, BOMA recommends the Commission adopt IIEC Witness Stowe's allocated cost of service study which makes various adjustments to Company's proposed study, including delineating between primary and secondary voltage. (IIEC Ex. 7.2). Given that many parties challenged the veracity of ComEd's allocated study, it would appear that IIEC's cost of service study is the closest thing to a valid study in the record in this case. (IIEC Initial Brief at 81).

## **IX. Rate Design**

### **C. Rate Design Issues**

#### **2. Non-Residential**

##### **a. Space-heating customers**

**(i) ComEd Fails to Present Any Evidence to Rebut Evidence Presented by BOMA that (a) the Former Rider 25 Nonresidential Space-Heating Customers Have Been Subjected to Disproportionate and Discriminatory Rate Increases, and (b) Differential Rate Treatment for Nonresidential Customers Is Justified on the Basis of Cost of Service. Accordingly, BOMA's Proposals for Rate Relief for the Nonresidential Customers Should be Adopted by the Commission.**

In its Initial Brief, BOMA provided definitive evidence that under ComEd's current rate design, the former Rider 25 customers in fact (and impermissibly) subsidize non-space-heating customers. (BOMA Initial Brief at 7-23). As BOMA has repeatedly asserted, Rider 25 was unlawfully eliminated by ComEd pursuant to the Commission's ruling in ICC Docket No. 05-0597, and such elimination has never been justified on the basis of cost studies required to be provided by ComEd.

By way of Response, ComEd, in cursory fashion, merely characterizes Rider 25 as "...a relic from another era", and, in callous disregard for the enormous rate shock experienced by one of its largest customer groups deems BOMA's proposals for rate relief as a "tired request." (ComEd Initial Brief at 106). Again, ComEd fails to submit any specific studies to rebut BOMA's central thesis—i.e. that the rate increases experienced by the former Rider 25 customers have been the most severe of all customer classes and that rate relief for the former Rider 25 customers in the form of differential rate treatment is justified on the basis of cost. In fact, ComEd's own embedded cost of

service study provides ample evidence that electric space-heating customers subsidize non-space heating customers. (BOMA Initial Brief at 19-22).

ComEd's dismissal of BOMA's arguments appears premised on ComEd's surprising and wholly inaccurate conclusion that "...BOMA presents no evidence that the costs of providing distribution service are somehow different for nonresidential space heating customers." In fact, BOMA presented specific exhibits and testimony to show that regardless of how residential cost of service figures were broken out, the cost of service for space heating customers is always lower than for non-space heating customers. (BOMA Cross Ex. 2; BOMA Initial Brief at 19-21). Such conclusion is bolstered by ComEd's own embedded cost of service study, which plainly shows that distribution revenue requirements of residential space heating customers are lower than for non-space heating customers. (ComEd Ex. 13.1; Heinz TR, 1973; 1-4). The net effect of this evidence is that absent ComEd's refusal to establish separate rate classes for these different customer types, one customer type—specifically the non-residential electric space heating customer—is subsidizing its counterpart. (*See* BOMA Initial Brief, 21-22).

BOMA further presented evidence that the percentage increases experienced by the former Rider 25 customers are the highest of any of ComEd's customer classes. (BOMA Corrected Ex. 2.2). Other than asserting that BOMA should have used the inappropriate BES-H rate rather than the applicable Rate-BES-NRA in conducting its rate increase analysis, ComEd does not dispute BOMA's calculations or data, nor does ComEd provide any analyses or testimony to contradict BOMA's findings.

Further un-rebutted is BOMA's testimony that differentiation of electric space heating customers for rate design purposes is a common industry practice. (BOMA Ex.



4.0, 8:11-23). In other jurisdictions distribution rates reflect a lower cost of service for electric space-heating customers. (BOMA Ex. 4.0, 9:124-133; BOMA Ex. 4:3).

Finally, ComEd's sanctimonious assertion that BOMA is the only party to challenge the delineation of ComEd's nonresidential customer classes is misleading. (ComEd Initial Brief at 106). The IIEC also proposes that customers (in this case, the High Voltage Delivery Service Class) be separated by load type (in this case, standard or high voltage load) in order to result in a more equitable treatment for such customers. (IIEC Initial Brief at 85-86). Like BOMA, IIEC seeks a rate design that will properly bill customers in accordance with cost causation and will avoid impermissible subsidies between customer types. (*Id.*)

In conclusion, in ICC Docket No. 07-0166, the Commission expressed its sensitivity to discriminatory rates that, to the extent the discrimination persists, BOMA should present a more complete analysis. (Final Order 07-0166 at 28). Responsive to the Commission's Order, BOMA presented:

(i) Significant analyses using ComEd's own rates and load profiles that graphically show that the larger non-residential customers have been subject to the highest rate increases since the inception of electric open-access; and (ii) that electric space-heating customers subsidize non-space-heating customers within distribution rate classes, as shown by ComEd's own cost of service study. These facts are all essentially un-rebutted by ComEd or any other party. Accordingly, pursuant to its earlier directives, the Commission should grant the relief proposed by BOMA.

## **XII. CONCLUSION**

This proceeding affords the Commission the significant opportunity to propel Illinois into the forefront of technological innovation and investment. By fostering customer beneficial programs and infrastructure, and not dictating or allowing the utility to dictate investment, the Commission can help ensure Illinois economic viability.

Furthermore, this proceeding provides the salient opportunity to correct the disproportionate impacts and inequities resulting from its approval of the elimination of disparate rate treatment between electric space-heating and non-space-heating customers.

Accordingly, BOMA requests the Commission initiate a separate proceeding to correct these disproportionate rate impacts and to determine a sufficient resolution of the space-heating issue.

Respectfully submitted,

**THE BUILDING OWNERS AND  
MANAGERS ASSOCIATION OF  
CHICAGO**

A handwritten signature in black ink, appearing to read "Michael Munson", with a stylized flourish at the end.

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